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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 270

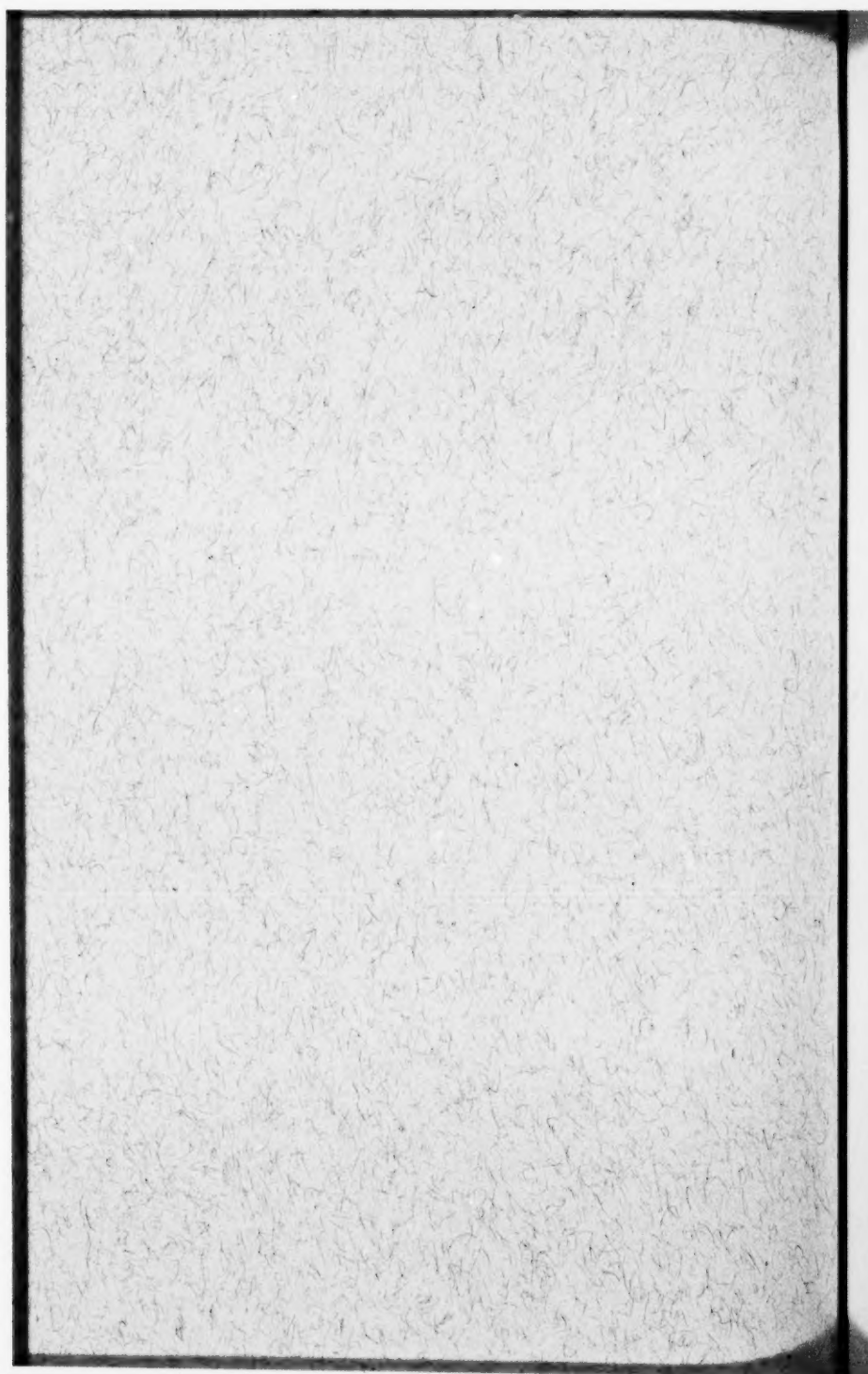
STUART A. EACHO, TRUSTEE IN BANKRUPTCY FOR TIP TOP
TAILORS (VIRGINIA), INCORPORATED, BANKRUPT,
Petitioner,

vs.

GERALD D. STONE, TRUSTEE IN BANKRUPTCY OF TIP TOP
TAILORS, INC., A DELAWARE CORPORATION, BANKRUPT;
MEINHARD-GREEFF & CO., INC.; CROMPTON-
RICHMOND CO., INC.; AND JOHN P. MAGUIRE &
CO., INC., CREDITORS OF TIP TOP TAILORS, INC., A DELAWARE
CORPORATION, BANKRUPT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF AND MOTION AS TO THE REC-
ORD.

R. HUGH RUDD,
Counsel for Petitioner.



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STUART A. EACHO, TRUSTEE IN BANKRUPTCY FOR TIP TOP
TAILORS (VIRGINIA), INCORPORATED, BANKRUPT,

vs.

Petitioner,

GERALD D. STONE, TRUSTEE IN BANKRUPTCY OF TIP TOP
TAILORS, INC., A DELAWARE CORPORATION, BANKRUPT;
MEINHARD-GREEFF & CO., INC.; CROMPTON-
RICHMOND CO., INC.; AND JOHN P. MAGUIRE &
CO., INC., CREDITORS OF TIP TOP TAILORS, INC., A DELAWARE
CORPORATION, BANKRUPT.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.**

To the Honorable, the Supreme Court of the United States:

Your petitioner, Stuart A. Eacho, Trustee in Bankruptcy for Tip Top Tailors (Virginia), Incorporated, Bankrupt, respectfully prays for review on a writ of certiorari of the decision of the Circuit Court of Appeals of the United States for the Fourth Circuit involved in the judgment of

the said court entered on the 13th day of April, 1942, in the appeal therein pending wherein your petitioner was appellee and the above-named respondents, Gerald D. Stone, Trustee in Bankruptcy of Tip Top Tailors, Inc., a Delaware Corporation, Bankrupt; Meinhard-Greeff & Co., Inc.; Crompton-Richmond Co., Inc.; and John P. Maguire & Co., Inc., Creditors of Tip Top Tailors, Inc., a Delaware Corporation, Bankrupt, appellants. Copies of the record printed below together with the proceedings and opinion in the Circuit Court of Appeals have been filed with the petition in accordance with the rules of this Court.

Federal Jurisdiction.

The petitioner is trustee for a Virginia corporation which was adjudicated a bankrupt by the U. S. District Court for the Eastern District of Virginia. The respondent, Stone, who is trustee for a Delaware corporation which has been adjudicated a bankrupt by the U. S. District Court for the District of New Jersey, has filed a claim against the petitioner. Respondent, Stone, filed a petition asking for a consolidation and administration in the New Jersey court of both bankrupt estates. The amount of the claim filed in the Virginia court by the respondent was in excess of \$39,000.00. The estate of the petitioner which has been reduced to cash amounts to approximately \$7,000.00.

Statement of the Matter Involved.

(a) CAUSE OF ACTION.

Tip Top Tailors (Virginia), Inc., is a Virginia corporation which owned and operated a store on Broad Street in the City of Richmond, Virginia, for approximately a year. Tip Top Tailors, Inc., is a Delaware corporation which controlled and operated the Virginia business. In November, 1940, the Delaware corporation was adjudicated a

bankrupt in the U. S. District Court for the District of New Jersey. Several days later the trustee in bankruptcy for the Delaware corporation filed a petition in involuntary bankruptcy against the Virginia corporation in the U. S. District Court for the Eastern District of Virginia and several days thereafter the Virginia corporation was likewise adjudicated a bankrupt. The New Jersey trustee thereupon filed a claim against the Virginia corporation in the sum of approximately \$39,000.00. Objection to this claim being made, the controversy was referred to a special master who reported to the District Court that the claim should be subordinated to claims of general creditors.

Thereupon the New Jersey trustee filed a petition asking for a consolidation in the New Jersey Court of both bankrupt estates, a pooling of assets and a sharing of all creditors of both corporations in the pooled assets.

(b) PROCEEDINGS.

The District Court denied the petition for consolidation and on appeal the Circuit Court of Appeals for the Fourth Circuit approved the action of the District Court in postponing the claim of the New Jersey trustee but reversed the District Court on the question of consolidation. In the judgment complained of the Circuit Court ordered consolidation of the two bankrupt estates in the New Jersey forum and the administration there as a single estate.

(c) QUESTIONS OF LAW INVOLVED.

The opinion of the Circuit Court of Appeals seemed to take it for granted that the evidence did not positively show that the creditors of the Virginia corporation expressly intended to extend credit to that corporation rather than to the parent. This view, however, is directly contrary to the facts as reported by the special master and approved

by the District Court. It seems clear that this mistaken view of the facts led the Circuit Court to decide the case as it did and to order consolidation of the two estates. The question of law thus presented is therefore as follows: (1) Did the court err in ordering a pooling of these two bankrupt estates and an administration of the consolidated estates by the New Jersey court?

Reasons Relied On for Allowance of Writ.

(1) That the court has erred in important particulars in the administration of the bankruptcy act.

(2) That the judgment complained of has most dangerous implications involving creditor rights against local corporations that happen to be foreign owned and controlled; and,

(3) That the judgment complained of makes an erroneous application of local law in disregarding the provisions of the Virginia Traders' Act.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Fourth Circuit commanding that court to certify and to file to this Court for its review and determination, on a day certain to be therein named a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket 4894, Gerald D. Stone, Trustee in Bankruptcy of Tip Top Tailors, Inc., a Delaware Corporation, Bankrupt; Meinhard-Greeff & Co., Inc.; Crompton-Richmond Co., Inc.; and John P. Maguire & Co., Inc., Creditors of Tip Top Tailors, Inc., a Delaware Corporation, Bankrupt, Appellants, *vs.* Stuart A. Eacho, Trustee in Bankruptcy for Tip Top Tailors (Virginia) Incorporated, Bankrupt, Appellee; and that said

judgment of the Circuit Court of Appeals for the Fourth Circuit may be reversed by the Honorable Court; that such proceedings may be had as may be necessary to afford your petitioner the right to continue and complete administration of the estate in his charge in the U. S. District Court for the Eastern District of Virginia; and that such other and further relief in the premises may be had as to this Honorable Court may seem right and just; and your petitioner will pray, etc.

STUART A. EACHO,
*Trustee in Bankruptcy for Tip Top
Tailors (Virginia) Incorporated,
Bankrupt, Petitioner.*

R. HUGH RUDD,
Counsel.